

REMARKS

In the final Office Action, the Examiner continues to reject claims 1-11 under 35 U.S.C. § 103(a) as allegedly unpatentable over CIVANLAR et al. (U.S. Patent No. 6,298,120) in view of ANDERSEN et al. (U.S. Patent No. 5,674,003). Applicants respectfully traverse this rejection.¹

At the outset, Applicants again point out that the Examiner has not made a proper rejection under 35 U.S.C. § 103(a). To make a proper rejection under 35 U.S.C. § 103(a), the Examiner should set forth in the Office Action (1) the relevant teachings of the prior art reference(s) relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (2) the difference or differences in the claim over the applied reference(s), (3) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (4) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. See M.P.E.P. § 706.02(j). With respect to claims 1-11, the Examiner provides no indication as to the difference or differences in the claims over CIVANLAR et al. and the proposed modification of the CIVANLAR et al. necessary to arrive at the claimed subject matter. Instead, the Examiner merely summarizes portions of CIVANLAR et al. and ANDERSEN et al., leaving Applicants to guess as to what features of claims 1-11 the Examiner relies on CIVANLAR et al. for

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

disclosing and on ANDERSEN et al. for disclosing. The Examiner has not made a proper rejection under 35 U.S.C. § 103(a).

Independent claim 1 is directed to a method for media communication over a hybrid network that includes a circuit switched network and a packet switched network. The method includes receiving a request for a media communication by a resource management processor connected to the hybrid network; determining an amount of resources in the hybrid network necessary to obtain a requested quality of service; allocating necessary resources to provide the requested quality of service on the hybrid network; and releasing the necessary resources upon termination of the media communication. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on step 301 in Fig. 3 of CIVANLAR et al. as allegedly disclosing this feature (final Office Action, p. 6). Applicants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Step 301 in Fig. 3 of CIVANLAR et al. discloses that a client specifies to an agent at least one service attribute. CIVANLAR et al. discloses that the service attribute can include path attributes that specify the communication medium to be employed and the quality of service that is desired (col. 4, lines 50-52). CIVANLAR et al. does not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

CIVANLAR et al. specifically discloses that the communication path between a calling party and a called party includes the public Internet, an internet that is privately owned and managed, the circuit switched telephone network, OR a packet network, such as an ATM or frame relay network (emphasis added) (col. 6, lines 5-11). CIVANLAR et al. does not disclose or suggest a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

The Examiner appears to allege that the Internet is a hybrid network (see, for example, final Office Action, p. 6). Applicants disagree.

The Internet is a packet switched network. The Internet is not a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1.

The disclosure of ANDERSEN et al. does not remedy the above deficiencies in the disclosure of CIVANLAR et al. For example, ANDERSEN et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. The Examiner appears to point to ANDERSEN et al.'s telephone network 30 as corresponding to a hybrid network (final Office Action, p. 8). Applicants disagree.

ANDERSEN et al. specifically discloses that telephone network 30 is a connection oriented telephony network (col. 4, lines 52-54). ANDERSEN et al. does not disclose or suggest that telephone network 30 is a hybrid network that includes a circuit

switched network and a packet switched network, as recited in claim 1. Thus, ANDERSEN et al. cannot disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Further with respect to the above feature of claim 1, the Examiner alleges:

... recitation "*circuit switched and a packet switched*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone ...

(final Office Action, pp. 3 and 4). Applicants submit that the Examiner has not established a *prima facie* basis to deny patentability.

Applicants' claim 1 specifically recites in the preamble that a hybrid network includes a circuit switched network and a packet switched network. The body of Applicants' claim 1 specifically refers to the hybrid network (which corresponds to the hybrid network recited in Applicants' preamble). The Examiner appears to allege that merely because the recitation that the hybrid network includes a circuit switched network and a packet switched network occurs in the preamble, patentable weight cannot be given. Applicants submit that the Examiner's allegation lacks merit. The recitation that the hybrid network includes a circuit switched network and a packet switched network does not merely recite a purpose of a process or the intended use of a structure. Moreover, the body of claim 1 depends on the recitation that the hybrid network includes a circuit switched network and a packet switched network for completeness. Applicants

submit that by ignoring specifically recited features of Applicants' claim 1, the Examiner's rejection of claim 1 is improper.

Further with respect to the above feature, the Examiner alleges:

Applicant's attention is directed to Figs. 1 and 2 of Civanlar for conducting a voice communication through a hybrid network which includes a packet internetwork, such as the Internet, connected to a circuit switched telephone network. Thus, a hybrid network including both a circuit switched telephone network (PSTN) and an Internet-based packet voice network (Internet).

(final Office Action, p. 5). Applicants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Fig. 1 of CIVANLAR et al. depicts an intelligent telephone network 100 that includes a long distance network 118 through which a telephone call can be placed. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Fig. 2 of CIVANLAR et al. depicts an example of individual computer networks 20 and 22 that communicate with one another via Internet 28. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Since CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, CIVANLAR et al. and ANDERSEN et al. cannot disclose or suggest allocating necessary resources to provide the requested quality of service on the hybrid network, as also recited in claim 1.

For at least the foregoing reasons, Applicants submit that claim 1 is patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination.

Claims 2-6 depend from claim 1. Therefore, these claims are patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Moreover, these claims are patentable over CIVANLAR et al. and ANDERSEN et al. for reasons of their own.

For example, claim 2 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network and transmitting the bill detail record to a call server connection to the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

The Examiner continues to ignore these features in the final Office Action despite Applicants specifically requesting that they be addressed. The Examiner has not established a *prima facie* case of obviousness with respect to claim 2. If this rejection is

maintained, Applicants again respectfully request that the Examiner specifically point out where CIVANLAR et al. or ANDERSEN et al. discloses the features of claim 2.

For at least these additional reasons, Applicants submit that claim 2 is patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination.

Independent claims 7 and 10 recite features similar to (yet possibly of different scope than) features described above with respect to claim 1. Therefore, Applicants submit that claims 7 and 10 are patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 1.

Claims 8 and 9 depend from claim 7. Therefore, these claims are patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 7.

Claim 11 depends from claim 10. Therefore, this claim is patentable over CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 10.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

PATENT
U.S. Patent Application No. 09/879,983
Attorney's Docket No. **VON96046C1**

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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